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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

BEFORE THE HONORABLE JOSEPH C. SPERO

IN RE: IN RE DMCA SUBPOENA TO)
STARMAKER INTERACTIVE INC.)
)
) NO. 18-MC-80075 JCS
)
) SAN FRANCISCO, CALIFORNIA
) FRIDAY, JULY 20, 2018
)
_____)

TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND

RECORDING 10:37 A.M. - 11:15 A.M.

APPEARANCES:

**FOR ARIYANTI
DANURITIYAS**

GOODWIN PROCTER LLP
601 MARSHALL STREET
REDWOOD CITY, CALIFORNIA 94063
**BY: INDRA NEEL CHATTERJEE, ESQUIRE
BRENDAN EUGENE RADKE, ESQUIRE**

**FOR RESPONDENT
STARMAKER**

KASOWITZ BENSON TORRES LLP
333 TWIN DOLPHIN DRIVE
SUITE 200
REDWOOD SHORES, CALIFORNIA 94065
**BY: JONATHAN K. WALDROP, ESQUIRE
JACK SHAW, ESQUIRE
GURTEJ SINGH, ESQUIRE**

**TRANSCRIBED BY: JOAN MARIE COLUMBINI, CSR #5435, RPR
RETIRED OFFICIAL COURT REPORTER, USDC**

1 FRIDAY, JULY 20, 2018

10:37 A.M.

2 (TRANSCRIBER'S NOTE: DUE AT TIMES TO COUNSELS' FAILURE TO
3 IDENTIFY THEMSELVES WHEN SPEAKING, CERTAIN SPEAKER
4 ATTRIBUTIONS ARE BASED ON EDUCATED GUESS.)

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6
7 PROCEEDINGS

8 **THE CLERK:** CALLING CIVIL CASE 18-MC-80075, IN RE:
9 DMCA SUBPOENA TO STARMAKER INTERACTIVE, INC.

10 COUNSEL, PLEASE COME TO THE PODIUMS AND STATE YOUR
11 APPEARANCES.

12 **THE COURT:** OH, MY GOD. IS THIS A TRIAL OR
13 SOMETHING?

14 **MR. CHATTERJEE:** IT'S A TRIAL. JUST WEIGHTY, WEIGHTY
15 ISSUES, YOUR HONOR.

16 **THE COURT:** GOOD. I HAVE LOTS OF QUESTIONS.

17 **MR. CHATTERJEE:** GOOD MORNING, YOUR HONOR. NEEL
18 CHATTERJEE AND MY COLLEAGUE BRENDAN RADKE ON BEHALF OF ARIYANTI
19 DANURITIYAS AND SMULE, INC.

20 **MR. WALDROP:** GOOD MORNING, YOUR HONOR. JONATHAN
21 WALDROP FROM KASOWITZ, BENSON, TORRES ON BEHALF OF STARMAKER
22 INTERACTIVE.

23 I DO NOT HAVE THE PRIVILEGE, YOUR HONOR, OF ARGUING
24 THIS MATTER. INSTEAD, YOUR HONOR, ONE OF MY COLLEAGUES AND
25 ASSOCIATE AT THE FIRM, JACK SHAW, WILL HAVE THE HONOR OF GOING

1 AGAINST NEEL, WHO I KNOW VERY WELL, YOUR HONOR. WE'RE MINDFUL
2 OF THE DISTRICT COURT'S ENCOURAGEMENT OF HAVING YOUNGER LAWYERS
3 HAVE OPPORTUNITY TO ARGUE MOTIONS, YOUR HONOR, SO WE'RE TAKING
4 THAT OPPORTUNITY NOW, YOUR HONOR.

5 **THE COURT:** OH, WONDERFUL.

6 **MR. CHATTERJEE:** YOUR HONOR, I ALSO WANTED TO
7 INTRODUCE THE GENERAL COUNSEL OF SMULE, SHARON SEGEV. WE
8 WEREN'T SURE UNDER YOUR ORDER WHETHER YOU WANTED SOMEBODY FROM
9 THE COMPANY HERE OR NOT.

10 **THE COURT:** (INDISCERNIBLE.)

11 **MR. CHATTERJEE:** SO OUT OF ABUNDANCE OF CAUTION, WE
12 BROUGHT HER.

13 **THE COURT:** I'M GLAD TO HAVE YOU HERE.

14 **MS. SEGEV:** THANK YOU.

15 **THE COURT:** AND WELCOME. WELCOME. YES, SIR?

16 **MR. WALDROP:** THANK YOU, YOUR HONOR. WE ALSO HAVE
17 OUR COLLEAGUE, GURTEJ SINGH, WHO IS AN ASSOCIATE IN OUR OFFICE
18 AS WELL, YOUR HONOR. THANK YOU.

19 **THE COURT:** WELCOME, MR. SINGH.

20 WELCOME.

21 **MR. SHAW:** THANK YOU, YOUR HONOR.

22 **THE COURT:** SO THERE'S HARD ISSUES AND EASY ISSUES.
23 I THINK OF THE RESTRICTIONS OF THE PURPOSES SHOULD BE FOR
24 PROTECTING RIGHTS UNDER TITLE 17 AND NOTHING NARROWER, THAT'S
25 EASY.

1 THE HARDER ISSUE -- AND I'M NOT -- I THINK IT'S
2 ACTUALLY PRETTY EASY -- IS WITH WHAT INFORMATION SMULE SHOULD
3 HAVE ACCESS TO. THAT'S THE HARDER ISSUE. AND WITH RESPECT TO
4 THAT, THE QUESTION IS: WHAT DO THEY NEED TO HAVE ACCESS TO TO
5 FIGURE OUT WHO THIS PERSON IS AND HOW THEY DID IT?

6 **MR. CHATTERJEE:** RIGHT, YOUR HONOR, SO OUR SUBPOENA,
7 WHICH IS PART OF THE COURT RECORD, DOCKET ENTRY NUMBER 4?

8 **THE COURT:** YEAH.

9 **MR. CHATTERJEE:** ACTUALLY ASKS FOR A FAIRLY NARROW
10 SET OF INFORMATION.

11 **THE COURT:** THAT'S NOT MY QUESTION. MY QUESTION IS
12 MUCH MORE PRACTICAL. WHAT DO THEY ACTUALLY NEED OR CAN THEY DO
13 WITHOUT IN TRYING TO TRACK THIS DOWN?

14 **MR. CHATTERJEE:** SO WHAT WE NEED IS WE NEED THE IP
15 ADDRESSES OF THE ACCESS INFORMATION BY THE USERS THAT WE --
16 THAT WE REQUESTED -- THE PERSON WHO'S BEEN IDENTIFIED, JENY
17 KANDOWANGKO, ANY OF THE USER INFORMATION, WHETHER THEY HAVE A
18 NAME OR EMAIL ADDRESS, WHATEVER THE REGISTRATION INFORMATION --

19 **THE COURT:** EMAIL, NAME, STREET ADDRESS, REGISTRATION
20 INFORMATION.

21 **MR. CHATTERJEE:** RIGHT. SO ANY OF THE REGISTRATION
22 INFORMATION. THIS IS BASICALLY COVERED IN TOPIC 1 OF EXHIBIT
23 A, AND IT TALKS ABOUT --

24 **THE COURT:** DO YOU HAVE A COPY OF THAT?

25 **MR. CHATTERJEE:** I CAN GIVE YOU A COPY, YOUR HONOR.

1 **THE COURT:** OR I CAN JUST --

2 **MR. CHATTERJEE:** IT'S DOCKET ENTRY NUMBER 4.

3 **THE COURT:** WHAT DOCKET ENTRY?

4 **MR. CHATTERJEE:** IT'S DOCKET ENTRY NUMBER 4, BUT I
5 CAN GIVE YOU A COPY.

6 **THE COURT:** YOU HAVE AN EXTRA COPY, BECAUSE I WANT
7 YOU TO --

8 **MR. CHATTERJEE:** YOUR HONOR, MAY I JUST HAND IT TO
9 YOU, OR HAND IT TO YOUR CLERK?

10 **THE COURT:** YES. SO YOU'RE LOOKING AT.

11 **MR. CHATTERJEE:** IF YOU LOOK AT EXHIBIT A.

12 **THE COURT:** GOT IT.

13 **MR. CHATTERJEE:** IN TOPIC 1 WE HAVE ONE USER LISTED
14 IN TABLE 1, AND WE ASK FOR THE NAMES, ADDRESSES, TELEPHONE
15 NUMBERS, EMAIL ADDRESSES, CELLULAR DEVICE I.D.S, INTERNET
16 PROTOCOL ADDRESSES, IP LOGS, SERVER LOGS, AND THE PROFILE NAMES
17 ASSOCIATED WITH THIS USER.

18 SO THIS IS THE THING THAT WILL TELL US WHO IT IS
19 THAT'S DOING THIS AND WHERE IT'S COMING FROM. AND THE REASON
20 WHY WE WANT THINGS LIKE IP LOGS AND WEB SERVER LOGS IS BECAUSE
21 SOMETIMES WHEN PEOPLE REGISTER, THEY DON'T USE THEIR REAL NAME,
22 AND SO YOU HAVE TO DO A LITTLE SLEUTHING ON LINE TO TRACE BACK
23 THE DOTS OF WHERE THINGS ARE COMING FROM.

24 CANDIDLY, YOUR HONOR, WE BELIEVE THESE ACCOUNTS WERE
25 ACTUALLY CREATED BY STARMAKER.

1 **THE COURT:** YOU SAID THAT. I UNDERSTAND.

2 **MR. CHATTERJEE:** IT IS HELPFUL, AND WE HAVE USED THIS
3 ON SOME OF OUR OTHER INVESTIGATIONS ASSOCIATED WITH OUR SECTION
4 1201 CLAIM, TO KNOW ABOUT THE LENGTH OF TIME, THE DATE OF
5 CREATION, AND THE DATE OF TERMINATION.

6 NUMBER 2 IS REALLY TALKING ABOUT THE USER ACCOUNT
7 INFORMATION. THAT IS VERY HELPFUL FOR US TO TRACE IT BACK AND
8 TO TRY AND COORDINATE IT WITH OUR OWN ACCESS INFORMATION. AS
9 YOU CAN IMAGINE, SOMETIMES THIS IS A LOT OF DATA. ONE OF THE
10 THINGS WE DO IS, IS WE LOOK AT OUR OWN INTERNAL INFORMATION AND
11 TRY TO COMPARE IT TO THINGS THAT THEY HAVE THERE IN ORDER TO
12 TRIANGULATE WHAT THE SOURCE OF THE CONTACT IS. SO, AGAIN,
13 THAT'S SOMETHING THAT'S NECESSARY FOR TRACING BACK THE
14 INFORMATION.

15 I'M NOT SURE FOR EITHER OF THOSE WHAT THEY COULD SAY
16 IS ACTUALLY PROPRIETARY TO STARMAKER.

17 **THE COURT:** NO. IT'S A PRIVACY ISSUE.

18 **MR. CHATTERJEE:** BUT THE USER HAS NOT RAISED AN
19 OBJECTION TO THIS, YOUR HONOR.

20 **THE COURT:** I UNDERSTAND THAT. I'M STILL GOING TO
21 THINK ABOUT IT.

22 **MR. CHATTERJEE:** AND THEN THE LAST THING IS REALLY
23 TRYING TO UNDERSTAND WHEN THE POST WAS MADE, AND WHEN IT
24 OCCURRED, AND HOW IT OCCURRED.

25 **THE COURT:** (INAUDIBLE.) OKAY.

1 **MR. CHATTERJEE:** AND THESE ARE ALL THINGS THAT THE
2 DMCA SPECIFICALLY CONTEMPLATES.

3 **THE COURT:** NO, I APPRECIATE THAT. MY QUESTION IS
4 ABOUT NEED. YOU KNOW, SO YOU THINK AS A PRACTICAL MATTER, YOU
5 CAN'T IDENTIFY, OR YOU NEED THIS INFORMATION IN ORDER TO
6 IDENTIFY, AND YOU NEED FOR SMULE TO SEE THIS INFORMATION IN
7 ORDER TO IDENTIFY --

8 (SIMULTANEOUS COLLOQUY.)

9 **MR. CHATTERJEE:** WE AT LEAST NEED A FEW PEOPLE,
10 INCLUDING OUR INTERNAL TECHNICAL PEOPLE.

11 **THE COURT:** OKAY.

12 **MR. CHATTERJEE:** BY "TECHNICAL PEOPLE," I MEAN THE
13 PEOPLE THAT ARE DEALING WITH OUR OWN IT SECURITY.

14 **THE COURT:** SO WHICH PIECE OF THIS DOES STARMAKER
15 THINK IS GOING TO GIVE YOU -- GIVE ACCESS TO THINGS THAT ARE
16 COMPETITIVELY SENSITIVE?

17 **MR. SHAW:** SO, YOUR HONOR?

18 **THE COURT:** YEAH. PLEASE (INDISCERNIBLE).

19 **MR. SHAW:** YOUR HONOR, WE THINK THAT, FIRST OF ALL,
20 THE CATEGORIES AND THE NAMES OF THE DATA FIELDS BY THEMSELVES
21 ARE SENSITIVE BY THEMSELVES.

22 **THE COURT:** SO I'M NOT QUITE SURE I UNDERSTAND THAT.
23 SO THEY GIVE YOU THE NAMES AND ADDRESSES -- YOU GIVE
24 THEM NAMES, ADDRESSES, TELEPHONE NUMBERS, EMAIL ADDRESSES,
25 CELLULAR DEVICES, IP ADDRESSES, IP LOGS, WEB SERVER LOGS

1 RELATED TO THIS USE OF -- USE OF THIS FOR THE USER LISTED, ET
2 CETERA, ET CETERA. WHAT DO YOU MEAN BY CATEGORIES? NOT THOSE
3 CATEGORIES?

4 **MR. SHAW:** COUNSEL HAS ASKED FOR WHAT INFORMATION
5 THAT WE KEEP IN OUR SYSTEM. WE THINK THAT THAT'S ALREADY A
6 CONFIDENTIAL INFORMATION REQUEST.

7 **THE COURT:** OKAY. HE IS GOING TO BE ALLOWED TO GET
8 THAT. SMULE MAY NOT BE ALLOWED TO GET THAT. I'M SORRY, BUT
9 HE'S GOING TO BE ALLOWED TO GET THAT.

10 THE QUESTION IS: HE'S GOT CERTAIN INFORMATION HE
11 WANTS FROM YOU SPECIFICALLY, AND IT'S LISTED HERE, AND NEEDS TO
12 DISCLOSE IT TO SMULE. WHICH OF THE THINGS THAT WE'VE JUST GONE
13 THROUGH AND WHY ARE THEY COMPETITIVELY SENSITIVE.

14 **MR. SHAW:** SO WE THINK THAT ALL THE INFORMATION IN
15 CATEGORY 1, EMAIL ADDRESS AND IP ADDRESS, ARE, FOR EXAMPLE,
16 PRIVATE AND PERSONAL INFORMATION OF OUR USERS.

17 **THE COURT:** OKAY. SO THAT'S NOT MY QUESTION. MY
18 QUESTION IS WHICH ARE COMPETITIVELY SENSITIVE? BECAUSE THE
19 ISSUE OF PRIVACY I WILL TAKE CARE OF WITH AN INJUNCTION APPLIES
20 TO SMULE. SO I'M NOT -- THAT IS -- I MEAN, I'M NOT GOING TO
21 EXPOSE MORE THAN IS NECESSARY, BECAUSE I THINK THE NEED HAS TO
22 BE BALANCED.

23 BUT YOU MADE AN ARGUMENT THAT IT'S COMPETITIVELY
24 SENSITIVE INFORMATION, AND I'M JUST NOT SEEING COMPETITIVELY
25 SENSITIVE INFORMATION.

1 **MR. SHAW:** SURE, YOUR HONOR. I CAN ANSWER. THERE IS
2 A CASE THAT WE CITED CALLED *GONZALEZ VERSUS GOOGLE*.

3 **THE COURT:** YEAH.

4 **MR. SHAW:** WHERE THE DISTRICT COURT OPINED THAT
5 INFORMATION -- A CERTAIN AMOUNT OF INFORMATION MAY NOT
6 NECESSARILY BE THAT COMMERCIALLY SENSITIVE; BUT IN THE
7 AGGREGATE, THAT CAN BECOME HIGHLY SENSITIVE.

8 AND I DON'T KNOW IF THE RECORD SHOWS, BUT I CAN
9 REPRESENT THAT THE VARIOUS COPYRIGHT OWNERS WITH SMULE BEHIND
10 THEM HAVE ISSUED AT LEAST TWO SUBPOENAS ON STARMAKER.

11 **THE COURT:** YEAH.

12 **MR. SHAW:** SO WE JUST THINK THAT THIS IS A SECOND
13 (INDISCERNIBLE) IF THEY ARE ALLOWED TO HAVE THE SAME PROTECTIVE
14 ORDER THAT ALLOWS THEM TO HAVE LITTLE PIECES OF INFORMATION AND
15 LITTLE PIECES OF INFORMATION OVER TIME. IN THE AGGREGATE THAT
16 CAN BECOME COMMERCIALLY SENSITIVE, AS WHAT THE JUDGE IN
17 THE *GONZALEZ* OPINION HAS RENDERED.

18 **THE COURT:** SO WHY DO I CARE ABOUT THAT? THIS IS ONE
19 CASE. THIS IS ONE SUBPOENA THAT'S IN FRONT OF ME. IF SOME
20 OTHER JUDGE THINKS, YOU KNOW, THAT WE NOW HAVE TOO MANY THINGS
21 GOING ON -- I MEAN, I'M NOT ASKING TO BE -- THEY'RE NOT ASKING
22 FOR ME TO ORDER YOU TO PRODUCE AGGREGATE INFORMATION. SO YOU
23 DON'T -- LET ME DO THE FLIP SIDE OF THAT.

24 SO YOU DON'T THINK THAT THIS INFORMATION THAT IS
25 SOUGHT HERE, WITHOUT REGARDS TO WHETHER IT'S BEING SOUGHT BY

1 SOMEONE ELSE IN A DIFFERENT -- WITH RESPECT TO A DIFFERENT
2 USER, THIS INFORMATION BEING SOUGHT IS NOT ITSELF COMPETITIVELY
3 SENSITIVE.

4 **MR. SHAW:** IT'S NOT AS COMMERCIALLY SENSITIVE AS IF
5 THEY WOULD BE IN THE AGGREGATE.

6 **THE COURT:** IS THERE ANY COMMERCIAL COMPETITIVE
7 SENSITIVITY TO IT? I MEAN, ARE THERE ANY TRADE SECRETS HERE
8 THAT THEY'RE ASKING FOR? IT SOUNDS ALL LIKE VERY VANILLA
9 STUFF, FRANKLY.

10 **MR. SHAW:** YOUR HONOR, SO -- YES, FOR EXAMPLE, IF WE
11 WERE TO JUST GIVE EMAIL ADDRESS OR THE IP ADDRESS TO SMULE,
12 WHICH WE ACTUALLY OFFERED AS A COMPROMISE BACK IN MAY --

13 **THE COURT:** YEAH.

14 **MR. SHAW:** -- WE DON'T HAVE A HAVE A PROBLEM WITH
15 THAT. BUT IF WE HAVE TO DISCLOSE A LAUNDRY LIST OF ALL THIS
16 INFORMATION LISTED HERE --

17 **THE COURT:** YEAH.

18 **MR. SHAW:** -- WE FEEL THAT WE ARE DISCLOSING OUR
19 SENSITIVE SYSTEM DESIGN, MEANING THE DATA FIELDS --

20 **THE COURT:** SO TELL ME --

21 **MR. SHAW:** YES, YOUR HONOR.

22 **THE COURT:** YOU'RE NOT GOING TO GIVE THEM -- YOU'RE
23 GOING TO GIVE IT IN WHATEVER FORMAT YOU'RE GIVING IT, BECAUSE
24 THEY WANT THE INFORMATION MORE THAN THEY WANT THE DOCUMENTATION
25 OF THE INFORMATION. THEY CAN GET TO THE DOCUMENTATION OF THE

1 INFORMATION ONCE THEY TRACK IT DOWN AND FIGURE OUT WHO IS AT
2 FAULT.

3 SO CELLULAR DEVICE I.D. OR IP LOGS WITH RESPECT TO
4 THIS USER, WHY IS THAT YOUR SYSTEMS DESIGN?

5 **MR. SHAW:** BECAUSE THERE'S MANY DATA FIELDS ABOUT A
6 USER THAT A SERVICE PROVIDER LIKE SMULE OR STARMAKER CAN
7 COLLECT, AND IT'S BY CHOICE. IT'S BY DESIGN.

8 **THE COURT:** YEAH.

9 **MR. SHAW:** AND STARMAKER HAS CHOSEN SPECIFICALLY
10 CERTAIN FIELDS AND NAMES OF THE FIELDS THAT IT HAS CHOSEN TO
11 COLLECT AND GATHER IN ITS SYSTEM, AND, THEREFORE, WE THINK THAT
12 REVEALS THE INNER WORKING OF THE BUSINESS.

13 **THE COURT:** OKAY. SO I GUESS I'M NOT UNDERSTANDING.

14 IP LOGS, LET'S TAKE AN IP LOG. THAT IS A LOG OF ALL
15 OF THE INTERNET PROTOCOL ADDRESSES THAT ARE ASSOCIATED WITH
16 THIS USER OVER TIME, OR SOMETHING LIKE THAT. YOU THINK YOU
17 PRINT OUT THOSE, THAT'S COMMERCIALY SENSITIVE?

18 **MR. SHAW:** BY ITSELF, NO, YOUR HONOR.

19 **THE COURT:** OKAY. GOOD. SO SAME WITH WEB SERVER
20 LOGS, WHICH I GUESS IS A VERY SIMILAR THING. THE PROFILE NAMES
21 OF LINKED MEDIA ACCOUNTS, THAT'S NOT COMMERCIALY SENSITIVE TO
22 YOU?

23 **MR. SHAW:** BY ITSELF, NO.

24 **THE COURT:** NO, OKAY.

25 THE DATE THE ACCOUNT WAS CREATED, THAT'S NOT

1 PARTICULARLY --

2 **MR. SHAW:** COMMERCIALLY, NO.

3 **THE COURT:** -- SENSITIVE?

4 **MR. SHAW:** CORRECT.

5 **THE COURT:** THE DATE -- WHETHER IT'S AN ACTIVE USER
6 USING ALL OTHER ACCOUNT USER INFORMATION, I'M NOT SURE ABOUT
7 THAT, BECAUSE I DON'T KNOW WHAT THAT MEANS.

8 BUT THE IP ADDRESS FROM WHICH THE POST WAS MADE, WHEN
9 THE POST WAS MADE, TIME STAMP WHEN IT WAS MADE, ANYTHING
10 RELATED TO THE METADATA RELATED TO THE POSTING OF THE SONG,
11 WERE ANY OF THOSE COMPETITIVELY SENSITIVE?

12 **MR. SHAW:** BY ITSELF, NO, YOUR HONOR.

13 **THE COURT:** OKAY. AND SO THESE CATEGORIES -- THESE
14 LISTS OF INFORMATION HERE ON EXHIBIT A ARE NOT THEMSELVES --
15 ARE NOT COMPETITIVELY SENSITIVE?

16 **MR. SHAW:** COMMERCIALLY.

17 **THE COURT:** -- COMMERCIALLY SENSITIVE JUST BY VIRTUE
18 OF BEING PRODUCED PURSUANT TO THIS SUBPOENA, RIGHT?

19 **MR. SHAW:** CORRECT.

20 AND IF I MAY, YOUR HONOR, I'D LIKE TO POINT OUT THAT
21 IN CATEGORIES 2 AND 35, MAYBE IT'S NOT A DISCUSSION FOR TODAY,
22 BUT WE DO THINK THAT THE CATCHALL PHRASE "OR OTHER USER ACCOUNT
23 INFORMATION," IN CATEGORY 2, AS WELL AS, "ALL OTHER AVAILABLE
24 INFORMATION AND METADATA RELATING TO THE POSTING," THESE -- I
25 THINK THESE TWO CATCHALL PHRASES ARE OVERBROAD.

1 **THE COURT:** WELL, I'M ACTUALLY NOT QUITE SURE WHAT
2 THEY MEAN, BUT...

3 **MR. CHATTERJEE:** SO, YOUR HONOR, I CAN CLARIFY THAT.

4 **THE COURT:** "ALL OTHER USER INFORMATION," YOU MEAN
5 ALL OTHER USER -- IDENTIFYING USER INFORMATION?

6 **MR. CHATTERJEE:** YEAH. WHEN YOU FILL OUT A
7 REGISTRATION, YOUR HONOR, THE STARMAKER APPLICATION HAS A BUNCH
8 OF THINGS YOU GOT TO PUT IN, AND IT'S REALLY THE IDENTIFYING
9 INFORMATION SUCH AS THAT THAT PEOPLE WILL PUT IN.

10 **THE COURT:** OKAY. SO WE CAN SUBSTITUTE "ALL OTHER
11 USER IDENTIFYING INFORMATION." WHAT ABOUT, ALL METADATA
12 RELATED TO THE POSTING? THAT COULD BE -- YOU KNOW, DEPENDING
13 ON HOW THEY DO THAT, METADATA COULD BE THINGS THAT ARE UNIQUE
14 TO THEIR SYSTEM.

15 **MR. CHATTERJEE:** I THINK THE OPERATIVE WORD HERE IS,
16 "RELATED TO THE POSTING."

17 **THE COURT:** IT STILL COULD BE RELATED TO THEIR
18 SYSTEM, DON'T YOU THINK --

19 **MR. CHATTERJEE:** PERHAPS WE SAY SOMETHING THAT WOULD
20 TIE IT TO THE USER, YOUR HONOR.

21 **THE COURT:** WELL, WHY DON'T -- YOU COULD START WITH
22 DELETING THE LAST "AND ALL OTHER" AND GET THE REST. MY GUESS
23 IS YOU PROBABLY DON'T NEED BEYOND THAT TO START WITH. WHAT DO
24 YOU THINK IS GOING TO BE IN THAT METADATA THAT YOU DON'T HAVE
25 FROM CATEGORY 1, 2 AND FIRST PART OF 3?

1 **MR. CHATTERJEE:** THE IP ADDRESS FROM WHICH THE POST
2 IS MADE IS GOING TO BE THE --

3 **THE COURT:** YES, YES, I GOT THAT.

4 **MR. CHATTERJEE:** -- THE KEY THING.

5 **THE COURT:** AND THE TIME STAMP.

6 **MR. CHATTERJEE:** I WOULD LIKE TO KNOW AS PART OF THAT
7 THE DEVICE I.D. RELATED INFORMATION ASSOCIATED WITH THE
8 POSTING, THAT'S METADATA.

9 **THE COURT:** DEVICE I.D. INFORMATION ASSOCIATED.

10 **MR. CHATTERJEE:** AND ANY WEB SERVER LOGS ASSOCIATED
11 WITH OUR POSTING.

12 **THE COURT:** (INDISCERNIBLE.)

13 **MR. CHATTERJEE:** YEAH. IT DOES HAVE IT THERE.

14 **THE COURT:** DEVICE I.D. NEEDS TO BE ADDED.

15 **MR. CHATTERJEE:** I WOULD SAY THE DEVICE I.D. WOULD BE
16 THE CRITICAL ONE.

17 **THE COURT:** WELL -- AND THE DEVICE I.D. ASSOCIATED
18 WITH THE POSTING IS NOT COMMERCIALY SENSITIVE FROM STARMAKER'S
19 POINT OF VIEW, RIGHT?

20 **MR. SHAW:** CORRECT, YOUR HONOR.

21 **THE COURT:** AND THE USER-IDENTIFYING INFORMATION IS
22 NOT COMMERCIALY SENSITIVE, RIGHT?

23 **MR. SHAW:** COULD YOU REPEAT THAT QUESTION, YOUR
24 HONOR.

25 **THE COURT:** I'M SORRY. I SOMETIMES MUMBLE.

1 THE USER IDENTIFYING INFORMATION IS NOT -- IF WE WERE
2 TO INSTEAD OF ALL ACCOUNT INFORMATION IN PARAGRAPH 2, YOU PUT
3 "ALL THE USER IDENTIFYING INFORMATION," THAT'S NOT COMMERCIALY
4 SENSITIVE, RIGHT.

5 MR. SHAW: IF WE WERE TO CHANGE TO A WORD "USER
6 IDENTIFYING INFORMATION," WE JUST THINK IT IS TOO BROAD, AND WE
7 DO NOT KNOW HOW WE CAN GO OUT AND GATHER THIS INFORMATION FOR
8 THE PROPER PARTY.

9 MR. CHATTERJEE: AND, YOUR HONOR, ONE OF THE THINGS
10 THAT WE DID IN THE MEET AND CONFER --

11 THE COURT: YEAH.

12 MR. CHATTERJEE: -- WE SAID, COULD YOU TELL US WHAT
13 CATEGORIES OF INFORMATION THAT YOU KEEP --

14 THE COURT: OKAY.

15 MR. CHATTERJEE: -- BECAUSE THAT WOULD HELP US FIGURE
16 IT OUT.

17 THE COURT: YEAH, OKAY. WELL, SO -- AND THAT SORT OF
18 THING I THINK IS THE SORT OF THING THAT OUGHT TO BE DISCUSSED
19 BETWEEN OUTSIDE COUNSEL. I MEAN, I THINK YOU DO HAVE TO HAVE
20 THAT DISCUSSION. I DON'T THINK THAT INFORMATION GOES TO SMULE.

21 MR. CHATTERJEE: NO, BUT THEY WOULDN'T TELL US.

22 (SIMULTANEOUS COLLOQUY.)

23 THE COURT: -- YOU WOULDN'T DO IT. BUT YOU HAVE TWO
24 CHOICES, BECAUSE "USER IDENTIFYING INFORMATION" IS A PRETTY
25 WELL UNDERSTOOD SORT OF TERM. IF YOU CAN'T FIGURE OUT WHAT IT

1 MEANS IN YOUR SYSTEM BECAUSE YOU HAVE CATEGORIES THAT DON'T
2 DIRECTLY CORRESPOND TO IT, OR ARE SLIGHTLY DIFFERENT, OR YOU'RE
3 CONCERNED ABOUT IT, YOU HAVE TWO CHOICES. YOU CAN PRODUCE
4 EVERYTHING, OR YOU MEET AND CONFER AND SAY, THIS IS THE SORT OF
5 THING THAT WE DO BETWEEN COUNSEL -- YOU KNOW,
6 OUTSIDE-COUNSEL-ONLY SORT OF THING AND HAVE A DISCUSSION ABOUT
7 THAT.

8 OKAY --

9 **MR. SHAW:** SO, YOUR HONOR, IF I MAY?

10 **THE COURT:** YES, SURE.

11 **MR. SHAW:** SO WE ARE TOTALLY OPEN TO FURTHER MEET AND
12 CONFERS IF THERE'S A PROTECTIVE ORDER IN PLACE OR PER YOUR
13 HONOR'S SUGGESTION FOR OUTSIDE COUNSEL ONLY. WE ARE TOTALLY
14 DEFINITELY UP FOR DISCUSSIONS AS WHAT INFORMATION THAT WE HAVE,
15 AND WE CAN DISCLOSE THAT TO OUTSIDE COUNSEL EYES ONLY.

16 I THINK THE ISSUE HERE IS WE CANNOT MOVE ON IN THIS
17 MATTER WITHOUT A PO. AND THE OTHER SIDE HAS NOT REALLY AGREED
18 TO ANY PROVISIONS OR PROTECTIONS SUCH THAT WE CAN OPENLY
19 DISCLOSE SUCH INFORMATION TO OUTSIDE EYES ONLY, BECAUSE THE
20 OTHER SIDE HAS INSISTED THAT SMULE, A THIRD PARTY, WHICH IS NOT
21 EVEN A PARTY TO THE SUBPOENA, SHOULD HAVE ANY OF THAT AND WHICH
22 DID MAKE A COMPROMISE.

23 **THE COURT:** THEY SAID AS PART OF THEIR INVESTIGATION
24 WHO DID THIS, THEY WANT TO ACTUALLY GO TO THE SITE WHERE IT
25 HAPPENED, AND IN ORDER TO DO THAT, THEY NEED TO WORK THE

1 PERSON, THE ENTITY THAT DID IT OR IT WAS POSTED TO FIGURE IT
2 OUT. WELL, THAT MAKES SENSE TO ME. AND THEY MIGHT HAVE TO
3 DISCLOSE INFORMATION TO THEM. THAT ALSO MAKES SENSE TO ME.

4 SO MY TENTATIVE THOUGHT -- I KNEW WE'D GET TO A
5 TENTATIVE EVENTUALLY -- IS THAT WITH THE MODIFICATIONS THAT I
6 SUGGESTED TO THE SUBPOENA, INSTEAD OF ALL OTHER ACCOUNT -- "ALL
7 OTHER USER ACCOUNT INFORMATION" IN PARAGRAPH 2 PUT, "ALL OTHER
8 USER IDENTIFYING INFORMATION," AND IN PLACE ON PARAGRAPH 3 OF
9 "AND ALL OTHER INFORMATION AND METADATA RELATING TO THE POSTING
10 OF THE SONG ON THE STARMAKER SERVICE" SUBSTITUTE, "THE DEVICE
11 I.D. INFORMATION ASSOCIATED WITH THE POSTING."

12 ALL OF THOSE THINGS ARE THE KINDS OF INFORMATION THAT
13 I WOULD BE INCLINED TO GO WITH THE PLAINTIFF'S VERSION OF THIS.
14 THE -- YOU KNOW, THERE MAY BE ANOTHER CATEGORY OF INFORMATION
15 THAT THEY WANT AT SOME POINT, BUT WITH RESPECT TO WHAT'S ASKED
16 HERE, THAT'S FINE.

17 NOW, YOU GET THAT, AND YOU GET MY RULING ON THIS.
18 YOU'RE STILL GOING TO HAVE TO MEET AND CONFER, BECAUSE THIS
19 ONLY APPLIES TO THIS, THE SUBPOENA AS WRITTEN. AND YOU'RE
20 GOING TO SAY TO HIM, WELL, WE NEED TO HAVE A DISCUSSION ABOUT
21 ALL OTHER ACCOUNT USER INFORMATION, YOU CAN AGREE BETWEEN
22 YOURSELVES THAT YOU'RE GOING TO HAVE A DISCUSSION ABOUT THE WAY
23 THINGS ARE MAINTAINED AT STARMAKER BETWEEN COUNSEL, NOT EVEN
24 FOR DISCLOSURE TO -- NOT FOR DISCLOSURE TO SMULE, OR SOMETHING
25 LIKE THAT, DO THAT.

1 **MR. SHAW:** SO, YOUR HONOR, IF I MAY MAKE A COMMENT
2 HERE?

3 **THE COURT:** YEAH.

4 **MR. SHAW:** SO WE CANNOT THINK OF A GOOD REASON TO WHY
5 SMULE'S OWN TECHNICAL EMPLOYEES OR TECHNICAL PERSONNEL SHOULD
6 BE ABLE TO ANALYZE ANY SO-CALLED ATTACKS BASED ON INFORMATION
7 FROM STARMAKER. AN EXPERT -- AN ANALYSIS EXPERT OR EVEN THE
8 LAW FIRM AND THEIR CONSULTANTS CAN DO THAT JOB. SO I CANNOT
9 THINK OF A GOOD REASON WHY SMULE'S INSIDERS SHOULD BE DOING
10 THAT JOB. AND TO US --

11 **THE COURT:** WHY DO I NEED TO THINK OF A GOOD REASON?

12 **MR. SHAW:** BECAUSE -- AND I --

13 **THE COURT:** THIS INFORMATION IS PRODUCIBLE PURSUANT
14 TO THE DMCA. THERE'S NO QUESTION. THERE'S NOT AN ISSUE. IT
15 CAN BE USED BY THEM TO ENFORCE THEIR RIGHTS UNDER TITLE 17.
16 THERE'S NO ISSUE. NONE OF IT IS COMPETITIVELY SENSITIVE. WE
17 JUST SPENT TEN MINUTES ESTABLISHING THAT.

18 WHY DO I NEED A GOOD REASON? AND I HAVE A GOOD
19 REASON. COUNSEL SAID WE NEED THEIR ASSISTANCE AS A TECHNICAL
20 MATTER. THAT'S FINE. YOU DISAGREE. YOU THINK IT CAN'T BE
21 DONE. WHY DO I EVEN HAVE TO DO THAT ANALYSIS?

22 **MR. SHAW:** YES, YOUR HONOR. THERE IS, I THINK, AT
23 LEAST TWO MAIN REASONS, AND IF I MAY, I CAN SHOW YOU SOME
24 POWERPOINT WITH THE STATUTE, OR I CAN SHOW YOU ON THE SLIDES.

25 **THE COURT:** NO SLIDES, NO POWERPOINT.

1 **MR. SHAW:** SURE.

2 **THE COURT:** MAKE YOUR ARGUMENT.

3 **MR. SHAW:** SURE, YOUR HONOR.

4 SO, NUMBER ONE, UNDER SECTION 512(H), THEIR MAIN
5 ARGUMENT IS THAT SMULE IS THE PERSON AUTHORIZED.

6 **THE COURT:** THAT'S A BAD ARGUMENT. I DISPOSED OF
7 THAT ARGUMENT.

8 **MR. SHAW:** OKAY.

9 **THE COURT:** IT'S GONE.

10 **MR. SHAW:** OKAY. AND THEN --

11 **THE COURT:** BUT THERE'S NOTHING IN 512(H) THAT SAYS
12 YOU CAN'T SHOW IT TO SOMEONE ELSE.

13 **MR. SHAW:** BUT 512(H) SPECIFICALLY -- 512(H)(3) AND
14 (5) SAYS THAT YOU CAN DISCLOSE THE INFORMATION TO THE COPYRIGHT
15 OWNER OR A PERSON AUTHORIZED BY THE COPYRIGHT OWNER.

16 **THE COURT:** WELL, IT SAYS THAT YOU CAN DISCLOSE IT TO
17 SOMEONE. IT DOESN'T SAY -- THEN THE COPYRIGHT OWNER GETS TO DO
18 WHATEVER IT NEEDS TO DO TO ENFORCE ITS RIGHTS UNDER TITLE 17.
19 RIGHT? THERE'S NO RESTRICTIONS. WHERE ARE THE RESTRICTIONS IN
20 THE STATUTE ABOUT WHERE THE SUBPOENAING PARTY GETS TO DISCLOSE
21 THE INFORMATION?

22 **MR. SHAW:** CORRECT. AND THEN MY SECOND MAIN POINT.

23 **THE COURT:** NO, NO, NO. THAT'S A QUESTION. WHERE IN
24 THE STATUTE ARE THERE ANY RESTRICTIONS ON WHAT HE DOES, THAT IS
25 TO SAY THE COPYRIGHT OWNER DOES, THE COPYRIGHT OWNER WHOSE NAME

1 I CAN'T PRONOUNCE?

2 **MR. SHAW:** YOU'RE ABSOLUTELY RIGHT. THERE IS -- IN
3 THE FOUR CORNERS OF THE STATUTE, THERE'S NO RULE THAT PROHIBITS
4 WHAT THE COPYRIGHT OWNER CAN DO WITH HER INFORMATION.

5 **THE COURT:** I MEAN, OTHER THAN IT HAS TO BE IN
6 CONNECTION WITH ENFORCEMENT OF THEIR COPYRIGHTS.

7 **MR. SHAW:** YES. BUT WE JUST THINK THAT IF SMULE IS
8 ALLOWED TO HAVE OUR CONFIDENTIAL INFORMATION, I THINK THAT
9 WOULD BE AGAINST PUBLIC POLICY. SO, YOUR HONOR, AS YOU KNOW,
10 STARMAKER IS A DIRECT COMPETITOR OF SMULE.

11 **THE COURT:** WELL, THAT'S WHY I ASK ALL THESE
12 QUESTIONS ABOUT WHETHER OR NOT ANYTHING IS COMPETITIVELY
13 SENSITIVE. I THINK YOU'VE GOT A -- SO, I ALWAYS -- I ALWAYS
14 KNOW THAT WE'RE GETTING DOWN TO THE NITTY GRITTY WHEN SOMEONE
15 SAYS IT'S PUBLIC POLICY, AND WE'RE ENTERING THE TERRITORY.

16 **MR. SHAW:** AND, ALSO, YOUR HONOR, WE WOULD LIKE TO
17 ALSO MAKE SURE THAT WHATEVER THAT WE DO HERE IS IN LINE WITH
18 YOUR OPINION AND THE PREVIOUS OPINION OF THE (INDISCERNIBLE)
19 MANAGEMENT TEAM.

20 **THE COURT:** MY OTHER OPINION. HATE THAT. OKAY.
21 YEAH.

22 **MR. SHAW:** SO WE FEEL THAT -- YOU KNOW, WE UNDERSTAND
23 THAT THIS OPINION WAS RENDERED IN THE CONTEXT OF A MOTION TO
24 QUASH A SUBPOENA, DMCA SUBPOENA, UNDER THE BASIS OF FIRST
25 AMENDMENT, BUT WE FEEL THAT THE STATEMENTS IN THE OPINION ARE

1 IN LINE WITH WHAT WE ARE --

2 **THE COURT:** (INDISCERNIBLE) ISN'T HERE TODAY. I
3 MEAN, I CAN'T REMEMBER THAT OPINION SPECIFICALLY, BUT THERE'S
4 NO --

5 **MR. CHATTERJEE:** THE USER ISN'T HERE.

6 **THE COURT:** THE USER'S NOT HERE. THERE'S NO
7 OBJECTION THAT YOU'RE GOING TO, YOU KNOW, SPOIL MY ANONYMOUS
8 SPEECH, YOU KNOW, OR ANY NUMBER OF THINGS ONE COULD
9 (INDISCERNIBLE) IF ONE WERE A USER, INCLUDING PRIVACY. THE
10 USER IS NOT HERE. DID THE USER GET NOTICE OF THIS? I MEAN,
11 DID YOU SEND AN EMAIL TO THE EMAIL ADDRESS?

12 **MR. SHAW:** I WILL HAVE TO CONFIRM THAT.

13 **THE COURT:** MY GUESS YOU IS HAVE. YOU PROBABLY DID.
14 OKAY. I APPRECIATE THAT.

15 SO LET ME JUST LOOK AT THIS FOR A SECOND. REALLY?
16 TEN OFFICERS, DIRECTORS AND EMPLOYEES? MY GUESS IS IT'S A
17 PRETTY NARROW GROUP AT SMULE THAT YOU REALLY NEED TO HAVE IT GO
18 TO.

19 **MR. CHATTERJEE:** THERE ARE A HANDFUL, YOUR HONOR.

20 **THE COURT:** AND WHAT ARE THEY?

21 **MR. CHATTERJEE:** IT'S THE SECURITY GROUP, AND THEN
22 THERE'S KIND OF THE -- THEY KIND OF COLLABORATE CLOSELY WITH
23 KIND OF THE OPERATIONS TEAM.

24 **THE COURT:** SO THERE'S NO OFFICERS WHO NEED TO KNOW
25 THIS, NO -- THE DIRECTORS OR OFFICERS OR GENERAL COUNSEL OR ANY

1 OF THOSE GUYS. I DON'T UNDERSTAND WHY THAT --

2 **MR. CHATTERJEE:** THE ISSUE IS THIS, YOUR HONOR, IS
3 THAT IF THE METADATA COMES BACK AND OUR SECURITY TEAM LOOKS AT
4 IT AND WE DETERMINE THAT IT ACTUALLY WAS STARMAKER WHO DID IT.

5 **THE COURT:** YEAH.

6 **MR. CHATTERJEE:** WE WANT TO BE ABLE TO TELL
7 MANAGEMENT THAT, ABOUT THE OUTCOME, NOT NECESSARILY ALL THE
8 UNDERLYING DATA. AND WE DON'T WANT TO RUN AFIELD OF THE
9 PROTECTIVE ORDER IF WE MAKE THAT ASSESSMENT, BECAUSE WE BELIEVE
10 THAT'S THE CASE. WE BELIEVE THERE'S A LOT OF EVIDENCE TO SHOW
11 IT, BUT THAT'S A PRETTY MATERIAL EVENT, IF THE DATA THAT WE GET
12 ACTUALLY SHOWS IT'S STARMAKER.

13 **THE COURT:** WELL, I'M NOT SURE WHAT THAT LOOKS LIKE
14 YET, AND YOU'RE NOT EITHER, I ASSUME, BUT MAYBE WE DON'T HAVE
15 TO GET TO THAT YET. BUT IT DOESN'T -- YOU KNOW, IT'S A -- THAT
16 PERSON WOULD NOT BE ABLE TO USE THE INFORMATION ANYWAYS.

17 **MR. CHATTERJEE:** THAT'S RIGHT. THEY'D BE RESTRICTED
18 BY THE PROTECTIVE ORDER.

19 **THE COURT:** SO WHAT'S THE UTILITY IN TELLING THEM?

20 **MR. CHATTERJEE:** WELL, BECAUSE IT'S ADVISING
21 MANAGEMENT. YOU KNOW, WE BELIEVE WE HAVE A SECTION 1201 CLAIM,
22 WHICH IS THE COPYRIGHT INFORMATION SYSTEMS PROTECTION CLAIM.

23 **THE COURT:** WELL, FILE IT. THEN IT WILL BE PUBLIC.

24 **MR. CHATTERJEE:** BUT THIS THING WOULD -- THIS
25 INFORMATION WOULD -- YOU KNOW, WOULD DEFINITELY SHOW IF IT

1 SHOWS IT'S STARMAKER.

2 **THE COURT:** I'M SAYING THAT. RATHER THAN GO TO
3 MANAGEMENT, YOU JUST FILE A LAWSUIT.

4 **MR. CHATTERJEE:** RIGHT. BUT AS YOU CAN IMAGINE,
5 DOING THAT IS A SIGNIFICANT EVENT, SO YOU WANT TO MAKE SURE
6 MANAGEMENT KNOWS WHY YOU'RE DOING THAT.

7 **THE COURT:** MANAGEMENT -- I DON'T KNOW. THE
8 COPYRIGHT HOLDER HAS HER OWN CLAIM. HER OWN CLAIM?

9 **MR. CHATTERJEE:** HER OWN CLAIM.

10 AND UNDER THE AGREEMENTS THAT EXIST WITH HER, IT
11 IS -- SMULE IS GOING TO BE ASSISTING HER IN FUNDING THAT AND
12 DOING ALL THOSE SORTS OF THINGS TO PURSUE THE CLAIM. AND,
13 AGAIN, THAT'S A SIGNIFICANT ENOUGH EVENT THAT WE'D WANT TO AT
14 LEAST APPRISE MANAGEMENT AS TO THE REASONS WHY. WE DON'T NEED
15 TO GO THROUGH THE DETAILS OF ALL THE NITTY GRITTY.

16 **THE COURT:** ALL RIGHT. ANYTHING ELSE ANYONE WANTS TO
17 SAY?

18 **MR. SHAW:** YES, YOUR HONOR, IF I MAY?

19 SO DO YOU THINK WE CAN HAVE AN OPPORTUNITY TO MEET
20 AND CONFER AS TO WHETHER CATEGORIES 1, 2, 3 OF THE SUBPOENAS
21 ARE OVERBROAD? DO WE HAVE ANOTHER OPPORTUNITY, OR YOUR HONOR
22 IS INCLINED TO RULE ON THAT TODAY?

23 **THE COURT:** THAT'S NOT REALLY BEFORE ME.

24 **MR. SHAW:** OKAY.

25 **THE COURT:** WHAT IS BEFORE ME IS A PROTECTIVE ORDER.

1 **MR. SHAW:** OKAY.

2 **THE COURT:** AND, YOU KNOW, WHAT MY RULING IS GOING TO
3 BE -- MIGHT AS WELL GET IT OUT THERE -- IS THAT AS MODIFIED BY
4 COUNSEL, THE SUBPOENA AS MODIFIED ON THE RECORD HERE. OKAY.
5 AS MODIFIED, I'M SATISFIED THAT THE -- THAT THE FORM OF
6 PROTECTIVE ORDER PROPOSED BY THE -- BY THE COPYRIGHT HOLDER IS
7 ADEQUATE FOR PROTECTION. THAT'S THE ONE THAT I WOULD HAVE YOU
8 ALL PUT TOGETHER.

9 AND, YOU KNOW, THEN WHAT HAPPENS AFTER THAT IS, YOU
10 KNOW, SOME DISCUSSION ABOUT OTHER THINGS. YOU KNOW, THAT'S
11 FINE. THERE'S NO MOTION TO ENFORCE IT, AND WE HAVEN'T TALKED
12 ABOUT THESE DETAILS. BUT I THINK IT'S BEEN NARROWED ENOUGH
13 THAT YOU'RE GOING TO HAVE A VERY DIFFICULT TIME WITH THE
14 OVERBREADTH ISSUE, BUT I DON'T KNOW THE DETAILS OF IT. NOBODY
15 HAS TALKED ABOUT THE DETAILS OF IT. SO YOU'RE GOING TO MEET
16 AND CONFER ABOUT THAT OF COURSE.

17 **MR. CHATTERJEE:** YOUR HONOR, I ACTUALLY THINK THAT
18 ISSUE IS DONE, BECAUSE WE'RE HERE TO TRY TO GET THIS PRODUCED.
19 THE SUBPOENA HAS BEEN PENDING FOR QUITE A WHILE. IF THEY
20 WANTED TO RAISE THOSE ISSUES, THEY SHOULD HAVE BROUGHT IT IN
21 THE COURSE OF THESE PROCEEDINGS TO COME IN FRONT OF YOU.

22 **THE COURT:** SO WHAT OTHER -- WHY -- WHAT OBJECTIONS
23 DO YOU HAVE OTHER THAN WHAT YOU'VE RAISED?

24 **MR. SHAW:** SO WE -- RIGHT. SO WE DON'T THINK THE
25 PURPOSES FOR TODAY IS TO DISCUSS THE OBJECTIONS TO THE BREADTH

1 AND SCOPE OF THE SUBPOENA.

2 **THE COURT:** SO THAT'S NOT MY QUESTION TO YOU. MY
3 QUESTION IS: WHAT OTHER OBJECTIONS DO YOU HAVE? WHAT'S YOUR
4 BREADTH AND SCOPE OBJECTION?

5 **MR. SHAW:** WE DON'T HAVE ANY OBJECTION AS TO THE
6 PROTECTIVE ORDER ISSUES, BUT WE DO HAVE --

7 **THE COURT:** WELL, LET ME ASK YOU THIS: WHAT'S YOUR
8 OBJECTION TO THE NAMES, ADDRESSES, TELEPHONE NUMBERS, EMAIL
9 ADDRESSES, IP ADDRESSES, IP LOGS, WEB SERVERS, AND PROFILE, THE
10 NAMES LINKED TO SOCIAL MEDIA ACCOUNTS, SUCH AS FACEBOOK, FOR
11 THE USER IDENTIFIER?

12 **MR. SHAW:** SO, YOUR HONOR, THE STATUTORY LANGUAGE OF
13 512(H) IS INFORMATION SUFFICIENT TO IDENTIFY THE ALLEGED
14 INFRINGER. WE JUST DON'T THINK THAT ALL OF THIS INFORMATION IS
15 NECESSARY, AND I THINK COUNSEL CAN MEET AND CONFER IN GOOD
16 FAITH AS TO WHAT'S SUFFICIENT.

17 **THE COURT:** I DON'T -- WHY SHOULD WE GO THROUGH THIS
18 AGAIN?

19 **MR. SHAW:** BECAUSE I -- YOU KNOW, THERE'S ACTUALLY A
20 CASE FROM DISTRICT COURT IN SOUTHERN CALIFORNIA THAT ACTUALLY
21 RESTRICTED THE SCOPE, AND WE FELT THAT'S --

22 **THE COURT:** BUT WHY IS THAT NOT BEFORE ME? WHY ARE
23 WE HERE JUST FUSSING ABOUT THIS AND NOT FUSSING ABOUT THAT?

24 **MR. SHAW:** BECAUSE, YOUR HONOR, THE JOINT LETTER WAS
25 ABOUT THE PROTECTIVE ORDER, AND WE THOUGHT WE WERE HERE TO

1 DISCUSS THE SCOPE OF THAT.

2 **THE COURT:** I'LL GIVE YOU THE -- THAT'S ACTUALLY
3 CORRECT. THE JOINT LETTER IS JUST ABOUT THE SCOPE OF THE
4 PROTECTIVE ORDER, AND THAT'S FINE, BUT I WILL GIVE YOU THIS
5 GUIDANCE. YOU'RE GOING TO HAVE TO COME BEFORE ME ON ONE OF
6 THESE JOINTS -- IF YOU COME BACK WITH ANOTHER JOINT LETTER.
7 AND IF YOU RAISE THE KIND OF ARGUMENT THAT YOU JUST RAISED, YOU
8 ARE VERY LIKELY TO LOSE. AND IF I THINK IT'S A BAD ARGUMENT, I
9 WILL SANCTION YOU. OKAY?

10 I WANT YOU TO BE VERY CAREFUL WITH THAT, BECAUSE I'M
11 NOT UNFAMILIAR WITH THESE TERMS, AND THEY DO MAKE SENSE TO ME,
12 AND IT'S -- IT IS THE KIND OF THING SOME PEOPLE ASK FOR WHEN
13 THEY'RE DOING THIS -- AN INVESTIGATION INTO HOW POSTINGS ARE
14 MADE.

15 NOW, YOU MAY THINK IT'S NOT QUITE NECESSARY, BUT I
16 WILL TELL YOU YOU HAVE AN UPHILL BATTLE WITH THAT. SO I WOULD
17 BE VERY CAUTIOUS ABOUT RAISING THESE THINGS. I'M NOT GOING TO
18 RULE ON THEM. I DON'T THINK I'M CALLED UPON TO RULE ON THEM.
19 IT WOULDN'T BE FAIR FOR ME TO RULE ON THEM.

20 BUT I DO WANT TO GIVE YOU A CAUTIONARY TALE THAT I
21 DON'T LIKE WHEN PEOPLE ARE -- OVERBREADTH IS MY LEAST FAVORITE
22 ARGUMENT, MY LEAST FAVORITE ARGUMENT. IN GENERAL, I OVERRULE
23 OVERBREADTH OBJECTIONS BECAUSE THEY DON'T MATTER.

24 WE'VE ALREADY ESTABLISHED NONE OF THIS INFORMATION IS
25 COMPETITIVELY SENSITIVE. WE'VE ALREADY ESTABLISHED THAT THE

1 ACTUAL POSTER IS NOT HERE OBJECTING. AND, IN ANY EVENT, THOSE
2 PRIVACY RIGHTS WOULD BE OUTWEIGHED BY THE NEED FOR INFORMATION
3 HERE.

4 SO YOU'RE JUST TALKING ABOUT RELEVANCE, OVERBREADTH.
5 RELEVANCE, OVERBREADTH, IN MY VIEW, IS THE WEAKEST POSSIBLE
6 OBJECTION. SO I WOULD ENCOURAGE YOU NOT DO IT, UNLESS IT'S
7 REALLY CRITICAL INFORMATION, WHICH I THINK IS REALLY UNLIKELY
8 SINCE WHAT'S REALLY CRITICAL INFORMATION -- WE'VE ALREADY HAD
9 THE DISCUSSION OF WHAT'S REALLY CRITICAL TO THE COMPANY, YOUR
10 COMPANY. SO I JUST CAUTION YOU WITH THAT.

11 SO ALL I'M GOING TO RULE ON IS THE SUBPOENA MODIFIED
12 AS STIPULATED AND THE PROTECTIVE ORDER. JUST BE CAUTIOUS ABOUT
13 WHAT ELSE YOU'RE GOING TO DO. SO YOU CAN SUBMIT TO ME A
14 REVISED FORM OF PROTECTIVE ORDER, AND I'LL SIGN IT.

15 **MR. SHAW:** UNDERSTOOD, YOUR HONOR.

16 **THE COURT:** COUNSEL HAS GOT ONE MORE THING.

17 **MR. WALDROP:** (INDISCERNIBLE) WILL MAKE SURE
18 (INDISCERNIBLE).

19 **THE COURT:** PLEASE.

20 **MR. WALDROP:** YOUR HONOR, YOUR HONOR, I'D LIKE --

21 **THE COURT:** WE LIKE THE OLDER GUYS TO GET A CHANCE
22 TOO.

23 **MR. WALDROP:** I'M PROBABLY OLDER THAN NEEL, EVEN
24 THOUGH I HAVE LESS HAIR. NEEL STILL HAS HIS HAIR.
25 (INDISCERNIBLE.)

1 (SIMULTANEOUS COLLOQUY.)

2 **THE COURT:** LOOK AT THE COLOR OF HIS HAIR. WELL, I
3 CAN TELL.

4 **MR. WALDROP:** USED TO BE TALLER THAN NEEL. I USED TO
5 BE TALLER THAN NEEL ABOUT TWO YEARS AGO.

6 **THE COURT:** THAT HAPPENS TO ALL OF US, TOO.

7 **MR. WALDROP:** YOUR HONOR, I JUST WANT TO STATE, YOUR
8 HONOR, I WANT TO THANK YOU FOR YOUR TIME. I WANTED TO MAKE
9 SURE THAT WE WERE CLEAR WITH THE COURT THAT WE HAVE ACTED, AND
10 WE BELIEVE WE CONTINUE TO ACT, IN GOOD FAITH WITH NEEL. WE
11 HAVE BEEN TRYING TO NEGOTIATE THESE ISSUES IN GOOD FAITH. AND
12 WE DON'T WANT TO LEAVE THE COURT WITH ANY IMPRESSION THAT WE'RE
13 PLAYING GAMESMANSHIP OR ANYTHING LIKE THAT, YOUR HONOR.

14 **THE COURT:** I MENTIONED SANCTIONS AS AN INCENTIVE.

15 **MR. WALDROP:** I UNDERSTOOD.

16 **THE COURT:** I'M SURE IT WILL BE. BUT, YOU KNOW,
17 SOMETIMES CLIENTS CALL THE SHOTS, AND SOMETIMES CLIENTS SAY,
18 WELL, YOU KNOW, I DON'T CARE, I NEED YOU TO DEFEND ME ON THIS;
19 I DON'T WANT TO PRODUCE THAT PIECE OF INFORMATION, SO IF YOU'VE
20 GOT AN OVERBREADTH THING, RAISE IT. YOU CAN GO BACK TO THE
21 CLIENT AND SAY, WE GOT -- THE JUDGE SAID, AND YOU'LL BE
22 SANCTIONED, WE SHOULDN'T DO THAT.

23 YOU'RE ALL BEING VERY HONEST AND FORTHRIGHT. I
24 APPRECIATE THAT.

25 **MR. WALDROP:** YOUR HONOR, THANK YOU VERY MUCH.

1 **THE COURT:** I KNOW SOMETIMES IT'S DIFFICULT.
2 SOMETIMES IT'S DIFFICULT. SO THERE YOU GO. SO GET ME THE
3 REVISED PROTECTIVE ORDER, AND I'LL SIGN IT.

4 **MR. CHATTERJEE:** THANK YOU, YOUR HONOR.

5 **THE COURT:** THANK YOU.

6 **MR. SHAW:** THANK YOU VERY MUCH, YOUR HONOR.

7 **THE COURT:** YOU CAN HAVE THIS BACK.

8 AND BY THE WAY, NICE JOB.

9 **MR. SHAW:** THANK YOU, YOUR HONOR.

10 **THE COURT:** YOU BET.

11 **MR. SHAW:** THANK YOU, YOUR HONOR.

12 (PROCEEDINGS ADJOURNED AT 11:15 A.M.)
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CERTIFICATE OF TRANSCRIBER

I CERTIFY THAT THE FOREGOING IS A TRUE AND CORRECT
TRANSCRIPT, TO THE BEST OF MY ABILITY, OF THE ABOVE PAGES OF
THE OFFICIAL ELECTRONIC SOUND RECORDING PROVIDED TO ME BY THE
U.S. DISTRICT COURT, NORTHERN DISTRICT OF CALIFORNIA, OF THE
PROCEEDINGS TAKEN ON THE DATE AND TIME PREVIOUSLY STATED IN THE
ABOVE MATTER.

I FURTHER CERTIFY THAT I AM NEITHER COUNSEL FOR,
RELATED TO, NOR EMPLOYED BY ANY OF THE PARTIES TO THE ACTION IN
WHICH THIS HEARING WAS TAKEN; AND, FURTHER, THAT I AM NOT
FINANCIALLY NOR OTHERWISE INTERESTED IN THE OUTCOME OF THE
ACTION.



JOAN MARIE COLUMBINI

JULY 24, 2018